

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

**IN RE:**

**THE ESTATE OF FRANCIS M. STOOPS**

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**C.A. No.: CPU4-09-008789**

**MEMORANDUM OPINION AND ORDER ON  
PETITION FOR TITLE TO ABANDONED PROPERTY**

Submitted: June 18, 2010

Decided: June 24, 2010

Michele Holmes, 203 Hoyer Court, Wilmington, Delaware 19803, Co-Administratrix of the Estate of Francis M. Stoops.

Meredith Jones, 2616 Pecksniff Road, Sherwood Park II, Wilmington, Delaware 19808, Co-Administratrix of the Estate of Francis M. Stoops.

Francis J. Trzuskowski, Esquire, Elzufon, Austin, Reardon, Tarlov & Mondell, P.A., Red Clay Center at Little Falls Road, 2961 Centerville Road, Suite 310, Wilmington, Delaware 19808, Counsel for Petitioner.

Jody C. Barillare, Esquire, Morris James, LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19899, Counsel for Petitioner.

**DAVIS, J.**

A status review hearing on the petition to for title to abandoned property (the "Petition") in the above captioned matter was held in the Court of Common Pleas on Friday, June 18, 2010. Following the hearing, the Court reserved decision. This is the Court's Memorandum Opinion and Order in connection with the Petition.

## **I. Procedural and Factual Background**

On October 8, 2008, the Estate of Francis M. Stoops (the "Estate") filed the Petition. William Woodward was the Executor of the Estate at the time the Petition was filed.

According to the Petition, Francis Stoops operated a Jewelry store at 107 West Eighth Street until April 17, 1985. When Francis Stoops discontinued operations at the Jewelry store there remained numerous items which had been left for repair. Those items include miscellaneous watches, pendants, small clocks, jewelry pieces and other items (collectively, the "Items"). After closing the store, Francis Stoops moved the Items to his personal residence at 1215 Flint Hill Road, Wilmington, Delaware 19808. Sometime later Francis Stoops passed away and letters testamentary were granted to William Woodward, the original Executor of the Estate on February 6, 2008. In the Petition, the Estate represents that Francis Stoops attempted to contact and/or locate the owners of the Items after the store was closed.

William Woodward caused the Petition to be filed in order to obtain: (i) a declaration that the Items were "abandoned," as defined by 25 *Del. C.* § 4001; and (ii) complete and absolute title to the Items for the Estate. Notice of the petition was posted in the New Castle County Courthouse on the Central Filing Office Bulletin Board beginning on February 19, 2010. After the filing of the Petition, William Woodward died. Michele Holmes and Meredith Jones became co-administrators d.b.n.c.t.a. of the Estate. Michele Holmes and Meredith Jones are purportedly the sole beneficiaries of the Estate.

The Court received a letter dated April 14, 2010 from the Estate's attorney withdrawing the Petition. The Court held a status review hearing on the request on June 18, 2010. At the hearing, Michele Holmes appeared and supported the request of the Estate's attorney to withdraw the Petition. Michele Holmes asked, in the alternative, if the Court could enter an

order declaring that the Estate has full right, title and interest to the Items. The Court reserved decision.

## II. Applicable Law

Chapter 40 of Title 25 of the *Delaware Code* governs Rights and Title to Abandoned Personal Property.<sup>1</sup> Abandoned personal property is defined by the code as:

tangible personal property which the rightful owner has left in the care or custody of another person and has failed to maintain, pay for the storage of, exercise dominion or control over, and has failed to otherwise assert or declare the ownership rights to the tangible personal property for a period of 1 year.<sup>2</sup>

The procedure to obtain title to abandoned property requires the person in possession of the property to file a petition in a court of competent jurisdiction.<sup>3</sup> The Justice of the Peace Courts, Court of Common Pleas and Superior Court have concurrent jurisdiction over actions for title to abandoned personal property.<sup>4</sup> Chapter 40 of Title 25 requires:

that a petition be filed, executed under oath and penalty of perjury, setting forth a complete description of the property, the name and last known address of the owners of the property, the names and addresses of the persons who claim to have an interest or lien in the property, a statement that the petitioner has conducted a lien search concerning the subject property for liens filed with the Delaware Secretary of State, a statement of the value of the subject property and, finally, a statement by the petitioner that the property has been abandoned and that the owner is not an infirm or incompetent person and is not a member of the military. Section 4003(b) of Title 25 also requires, in certain instances, that copies of the petition be posted in the Courthouse and three or more public places, as well as be advertised in a newspaper published or circulated in the county in which the petition was filed. This provision also requires the notice to include certain relevant information regarding the allegedly abandoned property.<sup>5</sup>

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<sup>1</sup> 25 Del. C. § 4001 et. seq.

<sup>2</sup> 25 Del. C. § 4001.

<sup>3</sup> 25 Del. C. § 4003.

<sup>4</sup> 25 Del. C. § 4006.

<sup>5</sup> *White v. Unknown Owner*, 2001 WL 818163 (Del. Ch.).

### III. Discussion

Based upon a review of the Petition, the Court finds that the procedures required by Chapter 40 of Title 25 have not been fully satisfied. As such, the Court cannot enter an order declaring the Items "abandoned property" and awarding the Items to the Estate. The Court will, therefore, honor the requests of Michele Holmes and the Estate's attorney and allow the Petition to be withdrawn.

The Estate filed the Petition executed under oath and penalty of perjury as required by the statute. However, the Estate failed to set forth a complete description of the Items in the Petition. The description of the Items submitted with the Petition merely states "miscellaneous watches, pendants, small clocks, jewelry pieces and other items." The Court finds that this summary description is not sufficient to provide notice to persons having a potential interest in the Items. The Petition also concedes that there are envelopes and/or tags with names, addresses and telephone numbers accompanying some of the items. In withholding the names, addresses and telephone numbers, the Estate has not complied with the requirement to provide the names and last known addresses of the owners of the Items. The Court recognizes that it is difficult to provide detailed information for hundreds of pieces of jewelry. However, the statute requires disclosure of the last known names and addresses of the owners of the property in order to effectuate proper notice to interested persons. In addition, the Petition does not include a statement that the Estate has conducted a lien search concerning the Items for liens filed with the Delaware Secretary of State as required by 21 *Del. C.* § 4003 (a) (4).

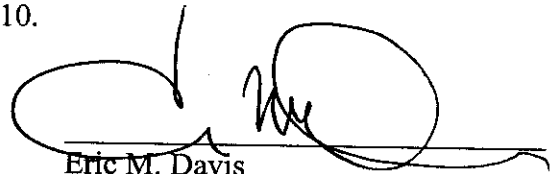
The statute also requires, among other things, that: (i) the Petition be posted in the courthouse as well as three or more other public places; (ii) notice of the Petition be advertised in a newspaper published or circulated in the county in which the Petition was filed; and (iii) the

notice include relevant information regarding the property allegedly abandoned. The Estate appears to have caused the Petition to be posted but the record is incomplete as to whether the other procedural requirements were fulfilled and, therefore, the Court is not satisfied that petitioner has complied with the procedural requirements of the statute.

#### **IV. Conclusion**

The Court is sympathetic to the request of Michele Holmes, especially in light of her relationship with Francis Stoops, the Estate and the length of time that has elapsed. It was for this reason that the Court took the matter under advisement and did not allow the Petition to be withdrawn at the hearing. Unfortunately, for the above stated reasons, the Petition fails to meet the statutory requirements for granting an order awarding title of the personal property to the Estate of Francis M. Stoops. As such, the Court cannot declare the Items “abandoned property” and award title to the Estate. The Court, therefore, grants the request to withdraw the Petition and dismisses the matter.

**IT IS SO ORDERED** this 24<sup>th</sup> day of June, 2010.



Eric M. Davis  
Judge